

FITAPELLI & SCHAFFER, LLP

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ROY JOHNSTON,

Plaintiff,

-against-

**SHOWROOM AUTO, LLC and BERNARD CHRIS
MERCEUS,**

Defendants.

15 Civ. 6428 (KAM)(PK)

**AFFIDAVIT OF JEFFREY
H. DORFMAN IN
SUPPORT OF REQUEST
TO ENTER DEFAULT**

I, JEFFREY H. DORFMAN, hereby declare, pursuant to 28 U.S.C. § 1746, the following to be true and correct:

1. I am a member of the Bar of this Court and an Associate with the firm of Fitapelli & Schaffer, LLP, attorneys for Plaintiff Roy Johnston (“Plaintiff”) in the above-captioned action. I am familiar with all the facts and circumstances in this action.

2. I make this affidavit pursuant to Rule 55.1 of the Civil Rules for the Eastern District of New York, in support of Plaintiff’s application for a Certificate of Default against Defendants Showroom Auto, LLC and Bernard Chris Merceus (collectively “Defendants” or “Showroom Auto”).

3. This is an action to recover unpaid wages owed by Defendants to Plaintiff for violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, as well as the New York Labor Law Article 19, §§ 650 *et seq.* and to recover damages for disability discrimination

committed by Defendants against Plaintiff in violation of the New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code §8-107 *et seq.*

4. Jurisdiction of the subject matter of this action is based on 28 U.S.C. §§ 1331 and 1337, and 28 U.S.C. § 1367.

5. This action was commenced on November 10, 2015, by the filing of the summons and complaint. A copy of the summons and complaint was served on each defendant on December 1, 2015, by personal service upon Lauren “Doe”, a person of suitable age and discretion and an employee of Showroom Auto at 42-08 35th Avenue, Long Island City, New York 11101. On December 3, 2015, the Process Server also enclosed a copy of the summons and complaint in an envelope properly addressed to Defendant Bernard Chris Merceus at his last known address, c/o Showroom Auto, LLC, 42-08 35th Avenue, Long Island City, New York 11101, and deposited said envelope with the proper postage in an official depository under the exclusive care and custody of the United States Postal Service. The envelope bore the legend “personal and confidential” and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the Defendant.

6. Service upon Defendants was proper pursuant to Fed. R. Civ. P. 4(e) and the N.Y.C.P.L.R. § 308, and proof of service by the Process Server was filed.

7. Defendants are not infants or incompetents. Defendants are not presently in the military service of the United States, as appears from facts in background reports prepared for this litigation, and at the time service was effected, the Process Server was advised that Defendant Bernard Chris Merceus was not involved in any military service.

8. Defendants' Answer was due on December 22, 2015. Defendants have not answered Plaintiff's Complaint and their time to Answer has expired.

WHEREFORE, Plaintiff requests a Certificate of Default by the Clerk.

Dated: New York, New York
December 30, 2015

By: /s/ Jeffrey H. Dorfman
Jeffrey H. Dorfman